

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

SOUTHERN PILOT INSURANCE COMPANY, INC.

PLAINTIFF

VS.

CIVIL NO. 1:96CV93-JAD

HERBERT LEON BREWER, III, ET AL

DEFENDANTS

MEMORANDUM OPINION

This is an action for declaratory judgment filed by Southern Pilot Insurance Company (Southern Pilot) against Herbert Leon Brewer, III, and his associated corporations (Brewer). Southern Pilot has now moved for summary judgment. Defendants/Counter-Plaintiffs have wholly failed to respond to the motion or to counter in any manner whatsoever any of the documents and sworn statements offered in support of the motion. After review of Plaintiff's motion, brief and documentation, the court finds that the motion is well-taken and should be granted.

Herbert Leon Brewer, III, is a chiropractor who practices in Verona and Horn Lake, Mississippi. On December 1, 1995, Brewer obtained insurance coverage from defendant on his Verona office, to become effective 12:01 a.m. December 4, 1995. This policy included coverage of \$154,000 for the building and \$250,000 for the contents. In the early morning hours of December 4, 1995, Brewer's Verona office was substantially destroyed by fire. Southern Pilot immediately began its investigation. Both the State Fire Marshall

and an independent cause and origin specialist retained by Southern Pilot concluded the fire was incendiary in origin.

The policy issued to Brewer provides:

§E.3. Duties in the Event of Loss or Damage

You must see that the following are done in the event of loss or damage to Covered Property:

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the loss or damage. Include a description of the property involved.
- c. As soon as possible, give us a description of how, when and where the loss or damage occurred.
- d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss. If feasible, set the damages property aside and in the best possible order for examination. Also keep a record of your expenses for emergency and temporary repairs for consideration in the settlement of the claim. This will not increase the limit of insurance.
- e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- f. Permit us to inspect the property and records proving the loss or damage. Also permit us to take samples of damaged property for inspection, testing and analysis.
- g. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance of your claim, including your books and records. In such event, your answers must be signed.
- h. Send us a signed sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- i. Cooperate with us in the investigation or settlement of the claim.
- j. Resume all or part of your "operations" as quickly as possible.

Brewer has refused to assist Southern Pilot in the

investigation of the fire loss claim. Time after time Brewer has declined to cooperate and provide his insurer with information required by the contract. Dr. Brewer has:

1. failed to provide a sworn statement in proof of loss;
2. returned correspondence to the insurance adjuster opened, resealed and marked "refused for cause;"
3. refused to provide an IRS authorization to Southern Pilot for access to tax records;
4. refused to execute a financial disclosure release;
5. refused to provide access to the alarm company records regarding the insured premises;
6. evicted the insurance adjuster from his office, threatening him and warning him never to return;
7. threatened plaintiff's counsel with "criminal charges" for representation of Southern Pilot in connection with the loss;
8. refused to provide any documentation requested in connection with the scheduling of his sworn statement;
9. refused to cooperate in the taking of his sworn statement.

From the undisputed facts of this case, there can be no question but that Brewer has materially breached the insurance contract, barring recovery. See, United States Fidelity & Guaranty Company v. Conaway, 674 F.Supp. 1270 (N.D. Miss. 1987). Accordingly, summary judgment will be entered for the plaintiff on both the claim and the counter-claim.

A separate judgment in accordance with this opinion will be entered.

**THIS** \_\_\_\_\_ day of September, 1996.

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UNITED STATES MAGISTRATE JUDGE